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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 ROBERT RAMESES,

12 Petitioner,

2:04-cv-1173-GEB-GGH-P

13 vs.

14 SCOTT KERNAN, Warden,

15 Respondent.

ORDER

16 _____/
17 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of
18 this court's March 31, 2008, denial of his application for a writ of habeas corpus. Before
19 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);
20 Fed. R. App. P. 22(b).

21 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
22 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
23 § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues
24 satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

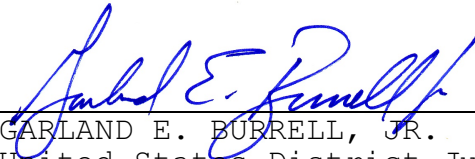
25 A certificate of appealability should be granted for any issue that petitioner can
26 demonstrate is “‘debatable among jurists of reason,’” could be resolved differently by a different

1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

3 Petitioner has made a substantial showing of the denial of a constitutional right in
4 the following issues presented in the instant petition: 1) whether petitioner was prejudiced by the
5 court order to wear a stun belt without a hearing and without consideration of less restrictive
6 means to ensure courtroom security; 2) whether prosecutors were motivated to pursue this case as
7 a Three Strikes case by relying, at least in part, on immunized testimony; 3) whether petitioner
8 was prejudiced by the imposition of his sentence in violation of Appendi [v. New Jersey], 530
9 U.S. 466, 120 S. Ct. 2348 (2000)].

10 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
11 issued in the present action.

12 Dated: December 8, 2008

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15 GARLAND E. BURRELL, JR.
16 United States District Judge
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.